

From: [GRANT Michael](#)
To: [MENZA Candice](#)
Subject: FW: UM 1633 - NWN Letter to Judge Grant re CUB 4-18 email
Date: Thursday, April 24, 2014 10:26:47 AM

Please docket in UM 1633.

From: Wallace, Sarah [mailto:Sarah.Wallace@pacificorp.com]
Sent: Wednesday, April 23, 2014 4:54 PM
To: GRANT Michael; Wendy McIndoo; PUC.FilingCenter
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Subject: RE: UM 1633 - NWN Letter to Judge Grant re CUB 4-18 email

Dear Judge Grant:

Thank you for the opportunity to reply to CUB's email regarding its discovery dispute with the utilities. My understanding is that informally replying by email is sufficient. PacifiCorp agrees with NW Natural, but would like to emphasize the following points:

- In the order requiring a generic docket, the Commission specifically stated that the investigation would be opened to consider the treatment of pension costs in rates on a "general, non-utility-specific, basis." Order No. 12-408 at 4. Nonetheless, PacifiCorp and the other utilities have responded to numerous data requests asking for extensive utility-specific data about pension plans, employee compensation, and other topics. Although PacifiCorp contends that this data is irrelevant to a generic policy docket, the company has responded to these data requests in good faith (over 130 data requests; 203 if sub-parts are considered). CUB's data request 39, however, simply goes too far.
- Discovery must be "commensurate with the needs of the case" and discovery that is "unreasonably duplicative, burdensome, or overly broad is not allowed." OAR 860-01-0500(1)-(2). All discovery must be "reasonably calculated to lead to the discovery of admissible information." ORCP 36B(1). CUB's data request 39 does not comply with these standards.
 - First, a request for data related to employee compensation, defined contribution retirements plans such as 401K plans, and health and dental benefit from 1987 through 2014 is clearly not "commensurate with the needs of the case." This is a generic policy docket into the treatment of pension costs in rates. Whether a particular utility's decision to modify the form of retirement benefits offered to employees was prudent and an understanding of the overall level of retirement and non-retirement employee benefits provided are entirely outside the scope of this docket. Furthermore, the prudence of any such decisions to modify the form

or retirement benefits was already determined when the utility made the decisions and sought to include the resulting costs in rates.

- Second, the requested information is not reasonably calculated to lead to the discovery of admissible evidence.
 - Health and dental plan information is completely irrelevant to the issues in this case, and CUB did not explain in its e-mail why that information is relevant or necessary.
 - The costs of defined contribution retirement plans do not flow through FAS 87 and have not been an issue in this case.
 - There are no further rounds of testimony in this docket. The arguments in CUB's e-mail have not been included in testimony to date. It is unclear how CUB would seek to admit any of the data provided in response to data request 39 into the record in this case or make new arguments based on this data since no party will have the opportunity to present evidence to rebut the new arguments.
 - In PacifiCorp's case, data before 1998 is irrelevant because PacifiCorp has repeatedly made it clear that it did not switch from using cash contributions as the basis for pension expense in rates to using FAS 87 until 1998.
- Third, the request for pension plan data is unreasonably duplicative. This data has already been requested and provided in response to previous data requests (such as in the response to CUB data request 5, which is the response referenced in PacifiCorp's response to CUB data request 39).
- Finally, responding to CUB's request is unduly burdensome and would require development of information not maintained in the ordinary course of business. PacifiCorp changed to a new accounting system in 1999. Although certain transactional records were archived in a database for substantially all periods going back to 1990, information responsive to CUB's request is not readily available and is not available at the level of detail requested by CUB. In addition, only limited personnel are capable of retrieving the information under the old system and current network configurations would require re-installing the legacy accounting software. Under the discovery rules, a party "will not be required to develop information...for another party" unless the (1) capability to develop the information is uniquely possessed by the party from whom discovery is sought; (2) the request is not unduly burdensome; (3) the information sought has a "high degree of relevance" to the issues in the case. OAR 860-01-0500(4). CUB has not shown that these standards have been met.

PacifiCorp will be available at the prehearing conference to elaborate on these points or to answer any questions.

Thank you,

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From: Wendy McIndoo [<mailto:wendy@mcd-law.com>]

Sent: Wednesday, April 23, 2014 4:47 PM

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Attached for filing in docket UM 1633 is an electronic copy of NWN's Letter to Judge Grant re CUB's April 18, 2014, email. A hard copy has been sent to the PUC Filing Center via U.S. Mail. Please contact this office with any questions.

Wendy McIndoo

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